IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO.2234 OF 2006

Allana Cold Storage Limited .. Petitioner.
Versus
The Income Tax Officer, 1(1)(1),
Mumbai and Others .. Respondents.

WRIT PETITION NO.2235 OF 2006

Allana Frozen Foods Limited .. Petitioner.
Versus
The Income Tax Officer, 1(1)(1),
Mumbai and Others .. Respondents.

WRIT PETITION NO.2236 OF 2006

Allana Investment & Trading Co. Ltd. .. Petitioner.
Versus
The Income Tax Officer, 1(1)(1),
Mumbai and Others .. Respondents.

WRIT PETITION NO.2237 OF 2006

Frigorifico Allana Limited .. Petitioner.
Versus
The Income Tax Officer, 1(1)(3),
Mumbai and Others .. Respondents.

Mr.Soli Dastoor, senior counsel with Mr.Jitendra Jain and Mr.Pankaj Sawant, Ms.Tripty M. Kapadia and Mrs.Ruchi Soni i/by Joy Legal Consultants for the petitioners.

Mr.B.M. Chatterji for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 25TH SEPTEMBER, 2006.

**P.C. :**

1. All these four petitions are filed by the companies which are sister concerns. They are all about the assessment orders passed by the first respondent - Income Tax Officer for the assessment

year 2001-2002. Rule on petitions. Reply has been filed by the first respondent. By consent of counsel for both the parties, petitions are heard and decided at the admission stage itself.

2. The principle grievance of the petitioners is based on the judgment of the Apex Court in the case of GKN Driveshafts (India) Limited V/s. Income Tax Officer and others reported in 259 (2003) ITR 19. The law laid down by the Apex Court in this judgment is that when a notice under section 148 of the Income Tax Act is issued, the noticee is expected to file return and if he so desires he may seek reasons for issuing the notice. The Apex Court has laid down that on the assessee seeking such reason, 'the assessing officer is bound to furnish the reasons within a reasonable time'. Thereafter, the Apex Court has added that on receipt of reasons, the noticee is entitled to file the objections and the assessing officer is bound to dispose of the same by passing a speaking order.

3. In the first matter i.e. writ petition No.2234 of 2006 filed by Allana Cold Storage Limited, the notice to reopen the assessment dated 18th March, 2005 was served on the petitioner on 22nd March, 2005. The petitioner wrote letters seeking copy of reasons from time-to-time. These reasons were not supplied in response to these letters dated 31st March, 2005 and

8th April, 2005. Instead a notice under section 143(2) was issued on 29th July, 2005. The petitioners again requested for the reasons on 17th August, 2005 in response to which another notice under section 143(2) was served on 21st December, 2005. Again the petitioners sought reasons by letter dated 30th December, 2005 and once again a notice under section 143(2) was served on 21st February, 2006. Thus, the first respondent though aware of the fact that the petitioners were seeking reasons for reopening the assessment has not supplied the reasons. This went on until 21st March, 2006 when practically at the end of the assessment year reasons were furnished. The petitioner filed their objections on 23rd March, 2006 and requested for personal hearing. What the first respondent has done is that he straight way passed the assessment order under section 143(3) which also includes the decision on the objections filed by the petitioners.

4. Similar is the state of affairs in the next three petitions i.e. writ petition nos.2235 of 2006, 2236 of 2006 and 2237 of 2006. We may however add that in these three matters the first respondent get the reasons on 22nd August, 2005 and the petitioners filed their objections on 9th September, 2005. In petition Nos.2235 and 2236 of 2006 what we find that similarly a common order of assessment and decision on

the objections is passed whereas in the fourth matter i.e. writ petition no.2237 of 2006 straight way the assessment order is passed but no decision is given on the objections filed by the petitioners.

5. We may add at this stage that in the earlier two assessment years concerning this very petitioners i.e. assessment year 1999-2000 and 2000-2001 similar development had taken place and there the revenue was fair enough to accept that the assessment order be set aside and the order was sought in terms of minutes whereby the assessment orders were set aside and the assessing officer was directed to dispose of the objections by passing a speaking order.

6. Mr.Dastoor, learned senior counsel appearing for the petitioners submits that thus the officer concerned was fully aware of the law laid down by the Apex Court and there is no reason why as far as this assessment year is concerned, he adopted this course viz. to pass a common order on the objections and assessment in the first matter, not to pass any order on the objections in the fourth matter and to pass a delayed order on the objections in second and third matter. What has further happened is that the petitioners have chosen to file appeals to the Commissioner of Income Tax (Appeals). They have been filed on 24th April, 2006. Mr.Chatterji, learned

counsel appearing for the revenue, therefore, submits that when the petitioners have availed of the remedy under statute, this Court ought not to interfere assuming that there was an error on the part of the officer concerned.

7. We have noted the submissions of both the counsel. The law as laid down by the Apex Court is binding on this Court as well as on the authorities functioning under the statute. This being the position, we fail to understand as to why the first respondent did not decide the objections separately which he is dutybound to decide. The whole idea in laying down the law in the abovereferred judgment of the Apex Court is to give an opportunity to the assessee to know as to what is the decision on his objections, which decision has also to be arrived at after giving an opportunity to the assessee. In the present case, the assessee has been denied this opportunity. Not only that but in the first three writ petitions what we find is that a common order has been passed on the objections as well as for the reassessment. In the fourth matter, the assessment order does not disclose any decision on the objections at all and undoubtedly no such decision has been given separately on the objections.

8. Having noted this scenario, in our view the

proper course will be to interfere with the assessment orders passed in all four matters by the concerned officer. We are aware that when an alternative remedy is resorted, the writ jurisdiction is not to be exercised, but that is a rule of self limitation. The orders challenged in the present matter are clearly against the law laid down by the Apex Court and, therefore, the exercise of writ jurisdiction is called for. That being so, we allow all these petitions and quash and set aside the orders of assessment passed in all these four petitions. In as much as the assessment orders are set aside, the appeals filed by the petitioners no longer require to be prosecuted. The same will stand disposed of.

9. Now that the impugned orders are set aside, the first respondent, after hearing the petitioners, will pass separate speaking orders on the objections which the petitioners have filed. We further add that in the event the objections are rejected, the assessment order will not be passed for a period of four weeks thereafter.

10. All contentions of both the parties are kept open. We further clarify that this order does not mean any reflection on the impugned orders on merits.

11. Rule made absolute in terms of this order with

no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)